Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	CC Docket No. 93-22

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") replies to other parties' comments on the Commission's FNPRM in this proceeding.[1] The FNPRM proposes to adopt more stringent requirements "to give telephone subscribers greater protection from fraudulent and deceptive practices associated with the use of 800 numbers to provide information services."[2]

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1 Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 94-200, released August 31, 1994 ("Reconsideration Order" and "FNPRM"). A list of the parties filing comments, together with the abbreviations used to identify them, is included as Appendix A.

2 FNPRM, ¶ 1.

INTRODUCTION

The comments clearly demonstrate that abuses are occurring and that telephone subscribers are being charged for information conveyed during calls to 800 numbers without "a preexisting agreement to be charged for the information or disclos[ure of] a credit or charge card number during the call," as required by TDDRA and the Commission's rules.[3] The Commission's proposed rule changes recognize the need to protect telephone subscribers from the fraudulent and deceptive practices used by some information service providers ("IPs").[4]

As the comments also demonstrate, however, the FCC's proposed rules would create significant carrier responsibilities (some of which are impossible to comply with) and would in some instances restrict consumer access to useful information services.[5] For these reasons, AT&T and others have suggested that the proposed rules should be

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[3] Title I of the Telephone Disclosure and Dispute Resolution Act, 47 U.S.C. § 228(c)(6)(C) ("TDDRA"), and the Commission's implementing rules, 47 C.F.R. § 64.1504(c). See, e.g., BellSouth, pp. 6-8; GTE, p. 3; MN-OAG, pp. 3-13; NAAG, pp. 3-5; NACAA, pp. 2-3; Pennsylvania, pp. 6-8; TCA, pp. 2-3.

[4] FNPRM, ¶ 1.

[5] See, e.g., Ameritech, pp. 1-2; AT&T, pp. 6-8, 13-14; BellSouth, pp. 10-11; InfoAccess, pp. 6, 8-10; ; MCI, pp. 6, 11; Pacific, pp. 6, 10; Pennsylvania, p. 8; SNET, pp. 3, 5; Sprint, pp. 3-4.

modified or clarified prior to adoption. In addition, regulatory agencies should take enforcement action against those information providers engaged in consumer fraud. AT&T (like most other carriers) is eager to eradicate the 800 fraud and abuse problem and has taken affirmative steps to do so, but carriers' abilities to identify and address the problem are necessarily limited.[6] AT&T urges the FCC, in coordination with the Federal Trade Commission, to direct its enforcement efforts against the IP perpetrators.[7] Some nondominant carriers with unreasonably high tariffed rates may be masquerading information services as transport. As other commenters note, the FCC should be strictly scrutinizing these tariffed arrangements

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[6] AIP (p. 4) alleges that AT&T's tariff violates constitutional due process requirements, because it authorizes AT&T to terminate immediately a customer's 800 Service for violation of TDDRA. See AT&T Tariff F.C.C. No. 2, Section 2.8.4, effective July 28, 1994, revised effective August 11, 1994. AIP is plainly mistaken. The Federal Constitution protects against governmental interference with individuals' rights and interests; it does not regulate private activity in any way relevant to this provision in AT&T's tariff. See Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974). AT&T's decision to include language in its tariff authorizing it to immediately terminate a violator's 800 Service was not compelled by TDDRA or Commission rules; it was a voluntary carrier initiative. Thus, AT&T's tariff does not implicate Constitutional procedural rights that exist only when "state action" is involved.

[7] See also, API, p. 7; GTE, p. 4; NAAG, p. 2 n.1; Pilgrim, p. 5; SNET, pp. 3-4.

to determine whether their services are being offered in conformance with TDDRA and the Commission's implementing rules.[8]

I. THE COMMISSION SHOULD NOT TOTALLY PROHIBIT THE USE OF 800 NUMBERS FOR INFORMATION SERVICES.

A number of parties have urged the Commission to totally prohibit charging for information services provided via 800 numbers.[9] Others have suggested that, even if the Commission does not prohibit use of 800 for paid information services, it should preclude carriers from billing for these services.[10]

Contrary to these assertions and consistent with Congressional intent in TDDRA, AT&T believes that the Commission should continue to allow the use of 800 numbers for the provision of presubscribed information services or where a caller discloses a credit or charge card to pay for the information.[11] As the Commission has recognized, Congress, in expressly permitting the use of 800 numbers

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[8] See, e.g., BellSouth, pp. 2, 8; MCI, p. 10; SWBT, pp. ii, 3, 13.

[9] See, e.g., ACUTA, p. 3; Allnet, p. 1; BellSouth, p. ii; CPUC, p. 2; MN-OAG, pp. 20-21; NTCA, p. 3; TCA, pp. 3-4; USTA, p. 2.

[10] See MN-OAG, pp. 20-21; NAAG, pp. 7-8; NASUCA, pp. 1-2; NACAA, p. 4; USTA, pp. 2, 4-5; Pennsylvania, pp. 9-10.

[11] 47 U.S.C. § 228(c)(6)(C).

for information services in these circumstances, balanced the need to protect consumers from abusive practices, while at the same time ensuring that the rules "do not stifle mutually beneficial business arrangements between IPs and their customers."[12] Prohibiting the use of 800 numbers for information services allowed under TDDRA (which includes services charged to carrier-issued calling cards frequently billed by the carrier in the same envelope as telecommunications charges) would deny to consumers, including business travelers, a convenient means of accessing various types of highly useful information services, contrary to Congressional intent.[13]

II. THE TRANSFER OF 800 CALLS TO ANY INFORMATION SERVICE SHOULD BE PROHIBITED ABSENT A PRESUBSCRIPTION OR COMPARABLE ARRANGEMENT FOR PAYMENT.

AT&T supports the Commission's proposal to expressly prohibit IPs and carriers from transferring callers to 800 numbers to "any information service" (regardless of its numbering prefix), unless a valid

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[12] FNPRM, ¶ 23 (citation omitted).

[13] See, e.g., AT&T, pp. 9-12; InfoAccess, pp. 6, 8-10; MCI, pp. 5-7; Sprint, pp. 3-4. See also BellSouth, p. ii (FCC would need statutory amendments to prohibit use of 800 numbers for accessing presubscribed information services); NTCA, p. 3 (total ban may be beyond FCC's power under TDDRA); TCA, pp. 3-4 (FCC apparently compelled to pursue less restrictive alternatives than a total ban).

presubscription or comparable arrangement exists,[14] subject to the technical feasibility of implementation (which AT&T addressed in its initial comments).[15] As Pacific (p. 4) points out, a broad prohibition of this sort is necessary to maintain consumer confidence in the toll-free nature of 800 services.

The Commission should not clarify that a carrier's tariffed services are outside of Section 64.1504, as some commenters request.[16] Rather, all information services, whether tariffed or not, should be deemed subject to the proposed ban of Section 64.1504(b), consistent with existing Section 64.1504(c), which prohibits charging for

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[14] FNPRM, ¶ 28, Section 64.1504(b)(proposed).

[15] AT&T, pp. 6-9.

[16] See InfoAccess, pp. 14-17; Pilgrim, p. 3-4. Contrary to these parties' suggestions, there is no inconsistency between the proposed ban on transferring 800 callers to "any information service" under Section 64.1504(b) and the requirement that aggregators allow the use of 800 numbers from their locations so that a consumer can access his or her desired operator services provider to place interstate calls. See 47 C.F.R. § 64.704(a). The Commission's operator services rules do not require aggregators to maintain access to those services that allow for "automatic [call] completion with billing to the telephone from which the call originated." See 47 C.F.R. § 64.708(g)(1). This is, in fact, consistent with the restrictions on use of 800 numbers in Section 64.1504, which prohibit charging for 800 calls based solely on ANI capture and absent a presubscription or comparable arrangement. See Reconsideration Order, ¶¶ 18-19 and n.23; see also n.23, infra.

"information conveyed" during an 800 call in the absence of a "presubscription or comparable arrangement."[17] Section 64.1504(c)'s prohibition, which implements TDDRA, 47 U.S.C. § 228(c)(6)(C), is broader than the statutory definition of "pay-per-call service," from which tariffed services are categorically exempted.[18] To create a "tariffed service exemption" under the 800 rules would play into the hands of IPs who disguise information services by mischaracterizing them as transport and impose high tariffed rates.

InfoAccess (pp. 14-16) suggests that proposed Section 64.1504(b) would, if interpreted literally, prohibit transfer of calls even to toll-free information services, such as the IRS hotline or various manufacturers' consumer information lines. InfoAccess has misinterpreted the proposed rule changes. Proposed Section 64.1504(b) would prohibit the transfer of an 800 caller to "any information service," where charging for the information conveyed would not be permitted under Section 64.1504(c).[19]

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[17] SWBT, pp. ii, 3, 13.

[18] See 47 U.S.C. § 228(i)(2); see also, the Commission's implementing rule, 47 C.F.R. § 64.1501(a)(4).

[19] Transfer of an 800 call under proposed Section 64.1504(b) to "any information service" is prohibited only where the "information service service . . . is not provided in accordance with paragraph (c) of the section." Section 64.1504(c) prohibits charging for the

(footnote continued on following page)

Proposed Section 64.1504(b) has no application to situations where no charge is assessed because the call is indeed toll-free.

III. A WRITTEN PRESUBSCRIPTION AGREEMENT SHOULD BE REQUIRED FOR PRESUBSCRIBED INFORMATION SERVICES ACCESSED VIA 800 NUMBERS AND NOT CHARGED TO A CREDIT OR CALLING CARD, BUT BILLING CARRIERS SHOULD NOT BE REQUIRED TO OBTAIN DIRECT EVIDENCE OF EACH SUCH AGREEMENT.

AT&T supports the Commission's proposal that for presubscribed information services provided over 800 numbers (and not billed to a credit or charge card subject to TILA and FCBA),[20] a written presubscription agreement with the party to be billed for the IP's charges will be required, given the expectation that calls to 800 will be toll-free and the inability of line subscribers to protect themselves from unauthorized charges by blocking the entire 800 NPA (without also sacrificing access to a host of useful toll-free service).

AT&T furthermore agrees with SWBT (pp. i, 5) that because the purpose of a written presubscription agreement is to obtain a voluntary, knowing consent of the subscriber

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(footnote continued from previous page)

information conveyed, except pursuant to a presubscription or comparable arrangement.

[20] See FNPRM, ¶ 29, Section 64.1510(b)(1)(proposed). As AT&T pointed out in its Comments, the rule as proposed would have potentially broader application, and should be narrowed. See AT&T, pp. 12-14.

to pay for the information, it is important that IPs soliciting potential customers do not mislead them into entering into a "written agreement." Thus, AT&T concurs that offers to enter into written agreements for presubscribed information services should be clear and explicit, and not hidden in an ambiguous or deceptive solicitation, e.g., in combination with a "free" offer, contest or sweepstakes entry, charitable solicitation or the like.

Sprint (pp. 2-4) raises the concern that a written presubscription agreement would be required even if information services are charged to a carrier-issued calling card. Such written agreements do not appear to be required if information services are charged to a "card generally accepted for the purchase of consumer goods, entertainment, travel, and lodging."[21] If carrier-issued calling cards continue to be treated as qualifying charge cards for payment of information services (as AT&T has demonstrated they should be),[22] then a written agreement should not be required.

AT&T recognizes, of course, that some unscrupulous entities may be issuing calling cards based on

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[21] FNPRM, ¶ 29; 64.1501(b)(5)(proposed).

[22] See AT&T, pp. 9-12.

ANI capture without ascertaining that the caller is the subscriber to the originating line or has authority to direct billing of charges to that telephone number. Strict enforcement of the Commission's rules -- which already prohibit this practice -- should eradicate this unauthorized billing problem, without denying callers the flexibility and convenience of using telephone calling cards issued by carriers that do not employ this prohibited practice.[23]

Moreover, although a written agreement should be mandated for presubscribed 800 information services not billed to a credit or charge card, the comments overwhelmingly confirm that it would be unduly burdensome to require billing carriers to obtain direct evidence of each such agreement between the IP and the party to be billed.[24] Rather, IPs should be required to certify to the billing carrier that the requisite written agreement exists and to produce the agreement, if a customer disputes

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[23] See Reconsideration Order, ¶¶ 18-19 and n.23, citing Letter from Gregory A. Weiss, Acting Chief, Common Carrier Bureau, to Randall R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, 9 FCC Rcd. 2819 (1994).

[24] Ameritech, pp. 1-2; Bell Atlantic, p. 2; BellSouth, p. 11; ISA, p. 6; ITA, Sect. B; MCI, p. 11; OPASTCO, p. 4; Pacific, pp. 6-10; Pennsylvania, p. 8; SNET, pp. 3, 5; SWBT, pp. 6, 9; USTA, p. 3.

billing of the IP's charges.[25] This serves the purpose of having conclusive written evidence in the event of a dispute, yet spares carriers the administrative burden of reviewing and maintaining presubscription agreements in the vast majority of cases when there is no dispute.

A few LECs suggest that IXCs (rather than LECs) should be responsible for keeping track of the written agreements between IPs and their customers, because the IXCs provide 800 access to the IP's service and they sometimes contract with the LEC for billing of the IP's services.[26] To the contrary, IXCs are in no better position than LECs to keep track of individual written agreements between IPs and their customers. As MCI (p. 11) points out, there is no realistic way for IXCs "to somehow determine whether a lawful agreement with a particular customer existed before billing." IXCs would face all of the same obstacles as the LECs in trying to keep track of these underlying agreements,[27] which Pennsylvania properly

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[25] Bell Atlantic, p. 2; ISA, p. 6; ITA, Part B; Pacific, p. 10; SNET, pp. 3, 5.

[26] OPASTCO, p. 4; SWBT, p. 9; USTA, p. 3.

[27] See Pacific (p. 6) for a detailed description of all the steps that would be involved; see also SNET, pp. 3, 5.

acknowledges would create an "impossible burden" and "impose exorbitant costs" on carriers.[28]

Rather than imposing insurmountable prebilling compliance obligations on carriers, AT&T agrees with SWBT that carriers can best protect consumers when they remove disputed charges from the bill.[29] A further additional consumer protection measure could be the requirement that the IP match the billing name and address ("BNA") information for the presubscribed customer with the LEC BNA for the telephone line subscriber. If the BNA does not match, then the IP should be prohibited from submitting the charge for billing to the carrier.[30]

IV. BILLING CARRIERS SHOULD BE REQUIRED TO SEPARATE CHARGES FOR PRESUBSCRIBED INFORMATION SERVICES FROM TELECOMMUNICATIONS CHARGES AND TO DISPLAY RELEVANT INFORMATION ON THE BILL.

Finally, under the Commission's proposed revisions, "carriers performing billing for IPs would be required, without exception, to separate the charges for presubscribed information services from charges for telecommunications services and to display for each information service charge: (1) the type of service and

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[28] Pennsylvania, p. 8.

[29] SWBT, p. 6.

[30] See Bell Atlantic, p. 3; ITA, Part A; USTA, p. 3.

the service provider's name and business telephone number; (2) the telephone number [i.e., the 800 number] actually called; (3) the amount of the charge; (4) the date and time of the call, and, for calls billed on a time-sensitive basis, the duration of the call."[31]

Most of these required data are taken directly from current Section 64.1510 of the Commission's rules, governing billing for 900 pay-per-call services, and are also appropriate in the context of billing for presubscribed information services accessed via an 800 number.[32] However, as the comments confirm, IPs and bill clearinghouses should be required to provide the requisite billing and call categorization information to the billing carrier; otherwise, it will not be possible for the carrier to segregate presubscribed information calls and display the required data.[33]

One of the proposed requirements, namely, that carriers provide the IP's name and telephone number for every such charge accessed via an 800 number, goes far beyond the pay-per-call billing requirements, and is both

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[31] FNPRM, ¶ 29, Section 64.1510(b)(2)(iii)(proposed).

[32] Carriers should be given a reasonable time to comply with these new billing requirements.

[33] Bell Atlantic, p. 4; GTE, p. 4; MCI, p. 12; Pacific, pp. 4-5; Pennsylvania, pp. 6-8, 11; SNET, pp. 3, 7.

unnecessary and unduly burdensome. As Ameritech (p. 3) points out, inclusion of this information would only clutter the bill and prove confusing for consumers. As with 900 pay-per-call services, the Commission can readily provide customers access to the identity of IPs by requiring the billing carrier to include on its bill a toll-free number through which customers may obtain additional information about the IPs from the carrier. The Commission has previously found that this measure obviates the added costs of including additional detailed disclosures with respect to each such charge itemized on the customer's bill.[34] The same measure should be followed with respect to billing of information services accessed using 800 service.

CONCLUSION

For the reasons stated above and in AT&T's Comments, the Commission's proposed regulations to protect consumers from abusive practices associated with the use of

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[34] See Report and Order, 8 FCC Rcd. at 6898 (¶ 72).

800 numbers to provide information services should be modified or clarified prior to adoption.

Respectfully submitted,

AT&T CORP.

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APPENDIX A

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American Public Communications Council ("APCC")

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Association of Information Providers ("AIP")

Association of College and University Telecommunications Administrators, Inc. ("ACUTA")

AT&T Corp. ("AT&T")

BellSouth Telecommunications, Inc. ("BellSouth")

Brigham Young University ("BYU")

People of the State of California and the Public Utilities Commission of the State of California ("California")

Consumer Action ("CA")

GTE Service Corporation and its affiliated domestic telephone companies ("GTE")

InfoAccess, Inc. ("InfoAccess")

Information Industry Association ("IIA")

Interactive Services Association ("ISA")

International Communications Association ("ICA")

International Telemedia Associates ("ITA")

MCI Telecommunications Corporation ("MCI")

Minnesota Office of Attorney General ("MN-OAG")

National Association of Attorneys General Telecommunications Subcommittee ("NAAG")

National Association of Consumer Agency Administrators ("NACAA")

National Association of Regulatory Utility Commissioners ("NARUC")

National Association of State Utility Consumer Advocates ("NASUCA")

National Telephone Cooperative ("NTCA")

New York Clearing House Association ("NYCHA")

State of New York Department of Public Service ("NYDPS")

900 Capital Services, Inc. ("Capital")

Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO")

Pacific Bell and Nevada Bell ("Pacific")

Pennsylvania Public Utility Commission, Pennsylvania Telephone Association and Pennsylvania Office of Consumer Advocate ("Pennsylvania")

Pilgrim Telephone, Inc. ("Pilgrim")

Rochester Telephone Corporation ("Rochester")

Southern New England Telephone Company ("SNET")

Southwestern Bell Telephone Company ("SWBT")

Sprint Corporation ("Sprint")

Tele-Communications Association ("TCA")

United States Telephone Association ("USTA")

CERTIFICATE OF SERVICE

I, Helen Elia, do hereby certify that on this 31st of October, 1994, a copy of the foregoing Reply Comments of AT&T Corp. was mailed by U.S. first class mail, postage prepaid, to the parties on the attached Service List.

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SUMMARY

AT&T supports the Commission's initiative to protect telephone subscribers from fraudulent and deceptive practices used by some information providers ("IPs"). AT&T urges the FCC, in coordination with the Federal Trade Commission, to direct its efforts at the IP perpetrators. Also, the FCC should be strictly scrutinizing nondominant carriers' tariffs to determine whether their services are being offered in compliance with TDDRA and the Commission's implementing rules.

The Commission should not totally prohibit the use of 800 numbers for paid information services, nor preclude carriers from billing for these services. Congress, in expressly permitting use of 800 numbers for presubscribed information services or where a caller discloses a credit or charge card to pay for the information, carefully balanced the relevant public interest considerations. To prohibit use of 800 numbers in the circumstances allowed under TDDRA would deny consumers a convenient means of accessing useful information services, contrary to Congressional intent.

The transfer of 800 calls to "any information service" should be prohibited unless a valid presubscription or comparable arrangement exists, subject to the technical feasibility of implementation (which AT&T addressed in its initial comments). Despite the urgings of some parties, the Commission should not clarify that a

carrier's tariffed services are outside of Section 64.1504(b)'s proposed ban. To create a "tariffed service exemption" under the 800 rules would play into the hands of IPs who disguise information services by mischaracterizing them as transport and impose high tariffed rates.

Written presubscription agreements should be required for presubscribed information services provided over 800 numbers and not billed to a credit or charge (including carrier-issued telephone calling) card subject to TILA and FCBA. Written agreements should not be required if a calling card is used to pay for information services, just as they are not required if a "general purpose" credit card is used.

The comments overwhelmingly confirm that the Commission's proposal to prohibit common carriers from billing for presubscribed information services without evidence of a written presubscription agreement would impose impossible burdens on carriers. Thus, IPs should be permitted to certify to the billing carrier that a written agreement exists and to produce the agreement in the event of dispute.

Finally, AT&T agrees that carriers billing for presubscribed information services should generally display on the bill the same information as is currently required for 900 pay-per-call services. IPs and bill clearinghouses should be required to provide the requisite billing and